

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Mail Classification Schedule

Docket No. RM2016-8

FINAL RULE
CONCERNING PRODUCT LISTS
AND THE MAIL CLASSIFICATION SCHEDULE

(Issued June 8, 2016)

I. INTRODUCTION

On April 6, 2016, the Postal Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking Concerning Product Lists and the Mail Classification Schedule, April 6, 2016.¹ The Commission proposed rules to fulfill its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006). The rulemaking proposes to replace existing 39 CFR part 3020, subpart A in its entirety, and make conforming changes to 39 CFR part 3020, subparts B, C, and D.

¹ Notice of Proposed Rulemaking Concerning Product Lists and the Mail Classification Schedule, April 6, 2016 (Order No. 3213); *see also* 81 FR 21506 (April 12, 2016).

The rulemaking proposes to amend existing rules concerning the Mail Classification Schedule (MCS) and the associated market dominant and competitive product lists to conform to the current practice of publishing the MCS on the Commission's website at *www.prc.gov*, noticing changes to the market dominant and competitive product lists in the *Federal Register*, and publishing the market dominant and competitive product lists in the *Code of Federal Regulations* (CFR).

The Public Representative and the Postal Service filed comments in response to Order No. 3213.² The commenters were generally supportive of the proposed rules. The commenters also included suggestions for improvements and sought minor clarification on various aspects of the proposed rules.

The Commission adopts the proposed rules as final rules with one minor clarification added to proposed § 3020.5(a).

II. COMMENTS AND DISCUSSION

A. Public Representative Comments

The Public Representative generally supports adoption of the proposed rules and presents several suggestions for improvement.

The Public Representative states it appears that the Commission's intent is to publish updates to the product lists in the CFR on a quarterly basis. PR Comments at 2. He bases this assumption on the following:

The current practice of the Commission is to accumulate all final orders involving changes to product lists and to file a product list update with the *Federal Register* on a quarterly basis.

Order No. 3213 at 7. Regardless, he notes that proposed § 3020.3(b) does not expressly state that updates will occur on a quarterly basis. He suggests the addition of

² Public Representative Comments on Proposed Rulemaking Concerning Product Lists and the Mail Classification Schedule, May 12, 2016 (PR Comments); United States Postal Service Comments on Proposed Rules Concerning Product Lists and the Mail Classification Schedule, May 12, 2016 (Postal Service Comments).

the word “quarterly” to the proposed rule such that it reads: “Notice shall be submitted ‘quarterly’ to the *Federal Register* for publication within 6 months of the issue date of the applicable final order that affects the change.” PR Comments at 2.

The Commission intends to publish updates to the product lists appearing in the CFR on a quarterly basis. A further goal is to publish updates within one week of the close of each fiscal quarter. However, the Commission chooses not to make quarterly publication a rigid requirement, as would be the case if the word “quarterly” was added to the rule. Experience has shown that the press of more important business occasionally takes precedence over producing the quarterly updates. Although the quarterly updates are an important recordkeeping function that provides visibility into current Postal Service product offerings, publication does not directly affect the substantive rights of any interested persons and may be delayed when necessary.³

The Public Representative states that proposed § 3020.5(a) may be interpreted to require the Commission to “immediately” update the MCS whenever the Commission issues a final order to update the MCS. PR Comments at 2. However, proposed § 3020.5(a) states that “Modification to the Mail Classification Schedule shall be incorporated within 3 months of the issue date of the final order.” The Public Representative suggests clarifying proposed § 3020.5(a) by adding the phrase “in accordance with section (b)” such that it reads: “Whenever the Postal Regulatory Commission issues a final order that modifies the Mail Classification Schedule, it shall update the Mail Classification Schedule appearing on its Web site at <http://www.prc.gov> ‘in accordance with section (b).’” *Id.*

The Commission will modify § 3020.5(a) to read: “Whenever the Postal Regulatory Commission issues a final order that modifies the Mail Classification Schedule, it shall update the Mail Classification Schedule appearing on its Web site at <http://www.prc.gov> in accordance with paragraph (b) of this section.”

³ The Commission’s position is that Commission orders issued within its jurisdiction are binding upon the Postal Service when issued, unless challenged pursuant to 39 U.S.C. 3663. Order No. 3213 at 7. The quarterly updates merely represent the effect of previously issued Commission orders.

The Public Representative reminds the Commission that appendices A and B, containing the market dominant and competitive product lists appearing in the proposed rules, may not be up to date as of the time the final rule is issued. He suggests that product lists, current as of the time the final order is issued in this docket, appear in the final order. *Id.*

The Commission has established a quarterly update schedule for product lists. Administratively, it is most efficient for the Commission to adhere to that schedule.⁴ Thus, the product lists that appear in the final rule will be equivalent to the product lists that appear in the CFR at the time the final rule is issued. The next comprehensive update is scheduled for July of 2016.

B. Postal Service Comments

The Postal Service supports the Commission's general approach of including the product lists, but not the MCS, in the CFR. Postal Service Comments at 2. Additionally, the Postal Service seeks further clarification of two aspects of the proposals.

The Postal Service observes that proposed § 3020.1(b) includes new references to 39 U.S.C. 404(e) (nonpostal services) and 39 U.S.C. 3641 (market tests). Postal Service Comments at 3. Furthermore, it states that the MCS currently requires identification of products that are either nonpostal services or market tests. *Id.* at 3-4. The Postal Service is concerned by the description appearing in Order No. 3213, in regard to these new statutory references. Specifically, it expresses concern with the use of "expands upon" in the description, as it could create unnecessary confusion. *Id.* at 4.

Proposed § 3020.1(b) replaces existing § 3020.1(a). Both specify that the starting point for the product lists are the market dominant products identified in 39 U.S.C. 3621(a) and the competitive products identified in 39 U.S.C. 3631(a).

⁴ A significant amount of tracking information indicating the source of product list changes appears in the quarterly update notices. Including the tracking information in this Order would be confusing and therefore not appropriate at this time.

Proposed § 3020.1(b) **expands upon** this requirement by including products within the product lists identified as market tests pursuant to 39 U.S.C. 3641 and nonpostal pursuant to 39 U.S.C. 404(e). This flows from the requirement for the Postal Service to properly categorize market tests as either market dominant or competitive (39 U.S.C. 3641(b)(2)) and the Commission to properly categorize nonpostal services as either market dominant or competitive (39 U.S.C. 404(e)(5)).

Order No. 3213 at 5-6 [emphasis added, footnote omitted].

The Commission's intent of including citations to the statutory authority for nonpostal services or market tests is not to expand upon or otherwise affect the substantive requirements, or the scope of Commission review, relating to these types of products. The inclusion only expands upon the description appearing in existing § 3020.1(a) of the types of products that are intended to appear on product lists and in the MCS.⁵ There is no change to current practice.

The Postal Service contends that it is duplicative to require the inclusion of size and weight limitations in the MCS in both proposed § 3020.4(b) and in existing § 3020.110. Postal Service Comments at 4. It suggests either deleting existing § 3020.11, or cross-referencing § 3020.110 in § 3020.4(b). *Id.* at 4-5.

Proposed § 3020.4(b)(2)(ii)(A) and § 3020.4(b)(3)(ii)(A) read:

Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each market dominant product.

Order No. 3213 at 12-13.

Existing § 3020.110 reads:

Applicable size and weight limitations for mail matter shall appear in the Mail Classification Schedule as part of the description of each product.

39 CFR 3020.110, subpart F.

⁵ Existing § 3020.13 already includes nonpostal services and market tests in product lists and the MCS.

The Commission concurs that the requirements appear duplicative, but will not make any changes at this time. The requirements are consistent with each other. However, as explained below, the underlying source for each requirement is different. Any potential confusion should be minimal.

The requirements of proposed § 3020.4(b)(2)(ii)(A) and § 3020.4(b)(3)(ii)(A) reflect useful information that historically has been included in mail classification schedules. It is appropriate to include a general synopsis of all material that will appear in the MCS in one section of the regulations.

The requirements of § 3020.110 *et seq.* were written in direct response to the new requirements of 39 U.S.C. 3682. This statutory provision requires, among other things, the Commission to prescribe rules for Postal Service requests to establish size and weight limitations for mail matter in the market dominant category of mail. Section 3020.110 points to the source of the material (the MCS) that all of § 3020.110 *et seq.* addresses. Deleting § 3020.110 would potentially make the remainder of that subpart unclear.⁶

III. ORDERING PARAGRAPHS

It is ordered:

1. Part 3020 of title 39, Code of Federal Regulations, is amended as set forth below the signature of this Order, effective 30 days after publication in the *Federal Register*.

⁶ While adding a cross-reference to proposed § 3020.4(b)(2)(ii)(A) and § 3020.4(b)(3)(ii)(A) may not be technically incorrect, it may diminish the distinction that the Commission is attempting to preserve, which is that 39 U.S.C. 3682 is the source for the regulations appearing in § 3020.110 *et seq.*

2. The Secretary shall arrange for publication of this Order in the *Federal Register*.
3. Docket No. RM2016-8 is hereby closed.

By the Commission.

Stacy L. Ruble
Secretary

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

Part 3020—PRODUCT LISTS

1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

2. Revise subpart A of part 3020 to read as follows:

Subpart A—Product Lists and the Mail Classification Schedule

Sec.

3020.1 Applicability.

3020.2 Product lists.

3020.3 Notice of product list change.

3020.4 Mail Classification Schedule.

3020.5 Modifications to the Mail Classification Schedule.

Appendix A to subpart A of part 3020—Market Dominant Product List

Appendix B to subpart A of part 3020—Competitive Product List

§ 3020.1 Applicability.

(a) The rules in this part require the Postal Regulatory Commission to establish and maintain lists of Postal Service products and a Mail Classification Schedule.

(b) The product lists shall categorize postal products as either market dominant or competitive. As established, the market dominant and competitive product lists shall be consistent with the market dominant products identified in 39 U.S.C. 3621(a) and the competitive products identified in 39 U.S.C. 3631(a). The market dominant and

competitive product lists shall also include products identified as market tests pursuant to 39 U.S.C. 3641 and nonpostal pursuant to 39 U.S.C. 404(e).

(c) The Mail Classification Schedule shall provide current price and classification information applicable to the products appearing on the market dominant and competitive product lists.

(d) Once established, the product lists and the Mail Classification Schedule may be modified subject to the procedures specified in this part.

§ 3020.2 Product lists.

(a) *Market Dominant Product List.* The market dominant product list shall be published in the **Federal Register** at Appendix A to subpart A of part 3020—Market Dominant Product List.

(b) *Competitive Product List.* The competitive product list shall be published in the **Federal Register** at Appendix B to subpart A of part 3020—Competitive Product List.

§ 3020.3 Notice of product list change.

(a) Whenever the Postal Regulatory Commission issues a final order that modifies the list of products in the market dominant category or the competitive category, it shall cause notice of such change to be published in the **Federal Register**.

(b) Notice shall be submitted to the **Federal Register** for publication within 6 months of the issue date of the applicable final order that affects the change.

(c) Modifications pending publication in the **Federal Register** are effective immediately upon written direction from the Postal Regulatory Commission.

(d) The **Federal Register** notice shall:

(i) Identify modifications to the current list of market dominant products and the current list of competitive products; and

(ii) Indicate how and when the previous product lists have been modified.

§ 3020.4 Mail Classification Schedule.

(a) The Postal Regulatory Commission shall publish a Mail Classification Schedule (including both current and previous versions) on its Web site at <http://www.prc.gov>. Copies of the Mail Classification Schedule also shall be available during regular business hours for reference and public inspection at the Postal Regulatory Commission located at 901 New York Avenue, NW, Suite 200, Washington, DC 20268-0001.

(b) The Mail Classification Schedule shall include, but shall not be limited to:

(1) Front matter, including:

(i) A cover page identifying the title of the document as the Mail Classification Schedule, the source of the document as the Postal Regulatory Commission (including Commission seal), and the publication date;

(ii) A table of contents;

(iii) A table specifying the revision history of the Mail Classification Schedule;

and

(iv) A table identifying Postal Service trademarks; and

(2) Information concerning market dominant products, including:

(i) A copy of the Market Dominant Product List;

(ii) Descriptions of each market dominant product organized by the class of product, including:

(A) Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each market dominant product;

(B) A schedule listing the rates and fees for each market dominant product;

(C) Where applicable, the identification of a product as a special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(D) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(E) Where applicable, the identification of a product as a nonpostal product; and

(3) Information concerning competitive products, including:

(i) A copy of the competitive product list; and

(ii) Descriptions of each competitive product, including:

(A) Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each competitive product;

(B) A schedule listing the current rates and fees for each competitive product of general applicability;

(C) The identification of each product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products;

(D) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(E) Where applicable, the identification of a product as a nonpostal product; and

(4) A glossary of terms and conditions; and

- (5) A list of country codes for international mail prices.

§ 3020.5 Modifications to the Mail Classification Schedule.

(a) Whenever the Postal Regulatory Commission issues a final order that modifies the Mail Classification Schedule, it shall update the Mail Classification Schedule appearing on its Web site at *http://www.prc.gov* in accordance with paragraph (b) of this section.

(b) Modification to the Mail Classification Schedule shall be incorporated within 3 months of the issue date of the final order.

(c) Modifications pending incorporation into the Mail Classification Schedule are effective immediately upon written direction from the Postal Regulatory Commission.

Appendix A to subpart A of part 3020—Market Dominant Product List

(An asterisk (*) indicates an organizational group, not a Postal Service product.)

First-Class Mail*

Single-Piece Letters/Postcards

Presorted Letters/Postcards

Flats

Parcels

Outbound Single-Piece First-Class Mail International

Inbound Letter Post

Standard Mail (Commercial and Nonprofit)*

High Density and Saturation Letters

High Density and Saturation Flats/Parcels

Carrier Route

Letters

Flats

Parcels

Every Door Direct Mail—Retail

Periodicals*

In-County Periodicals

Outside County Periodicals

Package Services*

Alaska Bypass Service

Bound Printed Matter Flats

Bound Printed Matter Parcels

Media Mail/Library Mail

Special Services*

Ancillary Services

International Ancillary Services

Address Management Services

Caller Service

Credit Card Authentication

International Reply Coupon Service

International Business Reply Mail Service

Money Orders

Post Office Box Service

Customized Postage

Stamp Fulfillment Services

Negotiated Service Agreements*

Domestic*

PHI Acquisitions, Inc. Negotiated Service Agreement

International*

Inbound Market Dominant Multi-Service Agreements with Foreign Postal

Operators 1

Inbound Market Dominant Exprés Service Agreement 1

Nonpostal Services*

Alliances with the Private Sector to Defray Cost of Key Postal Functions

Philatelic Sales

Market Tests*

Appendix B to subpart A of part 3020—Competitive Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

Domestic Products*

Priority Mail Express

Priority Mail

Parcel Select

Parcel Return Service

First-Class Package Service

Retail Ground

International Products*

Outbound International Expedited Services

Inbound Parcel Post (at UPU rates)

Outbound Priority Mail International

International Priority Airmail (IPA)

International Surface Air List (ISAL)

International Direct Sacks—M-Bags

Outbound Single-Piece First-Class Package International Service

Negotiated Service Agreements*

Domestic*

Priority Mail Express Contract 8

Priority Mail Express Contract 15

Priority Mail Express Contract 16

Priority Mail Express Contract 17

Priority Mail Express Contract 18

Priority Mail Express Contract 19

Priority Mail Express Contract 20

Priority Mail Express Contract 21

Priority Mail Express Contract 22

Priority Mail Express Contract 23

Priority Mail Express Contract 24

Priority Mail Express Contract 25

Priority Mail Express Contract 26

Priority Mail Express Contract 27

Priority Mail Express Contract 28

Priority Mail Express Contract 29

Priority Mail Express Contract 30

Priority Mail Express Contract 31

Priority Mail Express Contract 32

Priority Mail Express Contract 33

Priority Mail Express Contract 34

Priority Mail Express Contract 35

Parcel Return Service Contract 5

Parcel Return Service Contract 6

Parcel Return Service Contract 7

Parcel Return Service Contract 8

Parcel Return Service Contract 9

Parcel Return Service Contract 10

Priority Mail Contract 24

Priority Mail Contract 29

Priority Mail Contract 56

Priority Mail Contract 57

Priority Mail Contract 58

Priority Mail Contract 59

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Priority Mail Express & Priority Mail Contract 10

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Priority Mail Express & Priority Mail Contract 24

Priority Mail Express & Priority Mail Contract 25

Priority Mail Express & Priority Mail Contract 26

Priority Mail Express & Priority Mail Contract 27

Priority Mail Express & Priority Mail Contract 28

Parcel Select & Parcel Return Service Contract 3

Parcel Select & Parcel Return Service Contract 5

Parcel Select Contract 2

Parcel Select Contract 5

Parcel Select Contract 7

Parcel Select Contract 8

Parcel Select Contract 9

Parcel Select Contract 10

Parcel Select Contract 11

Parcel Select Contract 12

Parcel Select Contract 13

Parcel Select Contract 14

Priority Mail—Non-Published Rates

 Priority Mail—Non-Published Rates 1

First-Class Package Service Contract 35

First-Class Package Service Contract 36

First-Class Package Service Contract 37

First-Class Package Service Contract 38

First-Class Package Service Contract 39

First-Class Package Service Contract 40

First-Class Package Service Contract 41

First-Class Package Service Contract 42

First-Class Package Service Contract 43

First-Class Package Service Contract 44

First-Class Package Service Contract 45

First-Class Package Service Contract 46

First-Class Package Service Contract 47

Priority Mail Express, Priority Mail & First-Class Package Service Contract 2

Priority Mail Express, Priority Mail & First-Class Package Service Contract 3

Priority Mail Express, Priority Mail & First-Class Package Service Contract 4

Priority Mail Express, Priority Mail & First-Class Package Service Contract 5

Priority Mail Express, Priority Mail & First-Class Package Service Contract 6

Priority Mail Express, Priority Mail & First-Class Package Service Contract 7

Priority Mail Express, Priority Mail & First-Class Package Service Contract 8

Priority Mail Express, Priority Mail & First-Class Package Service Contract 9

Priority Mail & First-Class Package Service Contract 2

Priority Mail & First-Class Package Service Contract 3

Priority Mail & First-Class Package Service Contract 4

Priority Mail & First-Class Package Service Contract 5

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Priority Mail & First-Class Package Service Contract 7

Priority Mail & First-Class Package Service Contract 8

Priority Mail & First-Class Package Service Contract 9

Priority Mail & First-Class Package Service Contract 10

Priority Mail & First-Class Package Service Contract 11

Priority Mail & First-Class Package Service Contract 12

Priority Mail & First-Class Package Service Contract 13

Priority Mail & First-Class Package Service Contract 14

Priority Mail & First-Class Package Service Contract 15

Priority Mail & First-Class Package Service Contract 16

Priority Mail & Parcel Select Contract 1

Outbound International*

Global Expedited Package Services (GEPS) Contracts

GEPS 3

Global Bulk Economy (GBE) Contracts

Global Plus Contracts

Global Plus 1C

Global Plus 2C

Global Reseller Expedited Package Contracts

Global Reseller Expedited Package Services 1

Global Reseller Expedited Package Services 2

Global Reseller Expedited Package Services 3

Global Reseller Expedited Package Services 4

Global Expedited Package Services (GEPS)—Non-Published Rates

Global Expedited Package Services (GEPS)—Non-Published Rates 2

Global Expedited Package Services (GEPS)—Non-Published Rates 3

Global Expedited Package Services (GEPS)—Non-Published Rates 4

Global Expedited Package Services (GEPS)—Non-Published Rates 5

Global Expedited Package Services (GEPS)—Non-Published Rates 6

Global Expedited Package Services (GEPS)—Non-Published Rates 7

Global Expedited Package Services (GEPS)—Non-Published Rates 8

Global Expedited Package Services (GEPS)—Non-Published Rates 9

Global Expedited Package Services (GEPS)—Non-Published Rates 10

Priority Mail International Regional Rate Boxes—Non-Published Rates

Outbound Competitive International Merchandise Return Service Agreement with

Royal Mail Group, Ltd.

Priority Mail International Regional Rate Boxes Contracts

Priority Mail International Regional Rate Boxes Contracts 1

Competitive International Merchandise Return Service Agreements with
Foreign Postal Operators

Competitive International Merchandise Return Service Agreements with
Foreign Postal Operators 1

Competitive International Merchandise Return Service Agreements with
Foreign Postal Operators 2

Inbound International*

International Business Reply Service (IBRS) Competitive Contracts

International Business Reply Service Competitive Contract 1

International Business Reply Service Competitive Contract 3

Inbound Direct Entry Contracts with Customers

Inbound Direct Entry Contracts with Foreign Postal Administrations

Inbound Direct Entry Contracts with Foreign Postal Administrations

Inbound Direct Entry Contracts with Foreign Postal Administrations 1

Inbound EMS

Inbound EMS 2

Inbound Air Parcel Post (at non-UPU rates)

Royal Mail Group Inbound Air Parcel Post Agreement

Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

Special Services*

Address Enhancement Services

Greeting Cards, Gift Cards, and Stationery

International Ancillary Services

International Money Transfer Service—Outbound

International Money Transfer Service—Inbound

Premium Forwarding Service

Shipping and Mailing Supplies

Post Office Box Service

Competitive Ancillary Services

Nonpostal Services*

Advertising

Licensing of Intellectual Property other than Officially Licensed Retail

Products (OLRP)

Mail Service Promotion

Officially Licensed Retail Products (OLRP)

Passport Photo Service

Photocopying Service

Rental, Leasing, Licensing or other Non-Sale Disposition of Tangible Property

Training Facilities and Related Services

USPS Electronic Postmark (EPM) Program

Market Tests*

International Merchandise Return Service (IMRS)—Non-Published Rates

Customized Delivery

Subpart B—Requests Initiated by the Postal Service to Modify the Product Lists

3. Revise the heading of subpart B to read as set forth above.
4. Revise § 3020.30 to read as follows:

§ 3020.30 General.

The Postal Service, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or moving a product from one list to the other list.

Subpart C—Requests Initiated by Users of the Mail to Modify the Product Lists

5. Revise the heading of subpart C as set forth above.
6. Revise § 3020.50 to read as follows:

§ 3020.50 General.

Users of the mail, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

Subpart D—Proposal of the Commission to Modify the Product Lists

7. Revise the heading of subpart D as set forth above.

Subpart D—Proposal of the Commission to Modify the Product Lists

8. Revise § 3020.70 to subpart D to read as follows:

§ 3020.70 General.

The Commission, of its own initiative, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part,

modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.